

**\* THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

**+C.R.P.No.1945 OF 2024**

% 16.10.2024

# Guggilapu Surya Narayana

.....Petitioner

And:

\$ Sureddy Kanaka Durga Venu

....Respondent.

!Counsel for the Petitioner:

Sri Ch. Srinivas

^Counsel for the respondent

:

Nil

<Gist:

>Head Note:

? Cases referred:

<sup>1</sup> (2020) 10 SCC 706

<sup>2</sup> (2010) 8 SCC 329

**HIGH COURT OF ANDHRA PRADESH**

**\* \* \* \***

**C.R.P.No.1945 OF 2024**

**DATE OF JUDGMENT PRONOUNCED: 16.10.2024**

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

- |                                                                                  |        |
|----------------------------------------------------------------------------------|--------|
| 1. Whether Reporters of Local newspapers<br>may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be<br>marked to Law Reporters/Journals     | Yes/No |
| 3. Whether Your Lordships wish to see the<br>fair copy of the Judgment?          | Yes/No |

**RAVI NATH TILHARI, J**

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI****C.R.P.No.1945 OF 2024****JUDGMENT:**

Heard Sri Ch. Srinivas, learned counsel for the petitioner appearing through virtual mode.

2. This civil revision petition under Article 227 of the Constitution of India has been filed by the petitioner challenging the order dated 01.08.2024, passed in O.S.No.334 of 2019 in the I.A.No.375 of 2024, passed by the VII Additional Civil Judge (Senior Division), Visakhapatnam dismissing the I.A.

3. The petitioner is the defendant and respondent is the plaintiff in the suit.

4. The suit is filed by the plaintiff-respondent for recovery of a sum of Rs.2,71,700/- with subsequent interest @ 15% etc. based on the promissory notes.

5. Henceforth, the parties shall be referred as in the suit.

6. The plaintiff inter alia, pleaded that the defendant took loan from the plaintiff of Rs.10,00,000/- on 20.10.2016 for clearing sundry debts by depositing the original title deeds of his house and executed a demand promissory note agreeing to repay the same with interest @ 18%. Subsequently, he again borrowed an

amount of Rs.3,50,000/- for other purposes and executed another demand promissory note agreeing to repay with interest @ 15%. The defendant's daughter requested the plaintiff to give the original title deeds of her father to enable them to sell away the house to the third party. So the plaintiff handed over the original deeds to the daughter. The defendant, however, failed to repay the amount either principal or interest. Hence, the suit was filed.

7. The defendant filed written statement, inter alia, denying the suit averments. He denied the borrowing of any amount, deposit of the title deed and also the execution of the promissory notes, which were said to be foisted and fabricated documents.

8. The defendant filed I.A.No.375 of 2024 under Order VIII Rule 1-A(3) read with Section 151 of Civil Procedure Code (for short, "the CPC") to grant leave to file the following documents to receive the same to mark as exhibits on his behalf.

| Sl.No. | Date       | Description of the documents                                                                                                                |
|--------|------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | 22.04.2015 | Certified copy of Registered mortgage deed executed by the defendant in favour of Chukkala Raghavendra Rao, bearing document No.1974/4/2015 |
| 2      | -          | Original of account statement of defendant from 1 <sup>st</sup> April, 2015 to 11 <sup>th</sup> May, 2015, issued by SBI, Pendurthy Branch. |
| 3      | 14.09.2017 | Original registered lawyer's notice issued to the defendant                                                                                 |

|   |            |                                                |
|---|------------|------------------------------------------------|
| 4 | 23.01.2018 | Original Redemption deed document No.334/2018  |
| 5 | 07.12.2018 | Certified copy of plaint in O.S.No.182 of 2018 |

9. In the affidavit, in support of I.A.No.375 of 2024, it was inter alia stated that in the year 2015, the daughter of the defendant availed the loan of Rs.5,00,000/- from Chukkala Ragavendra Rao, by mortgaging the house of the defendant through registered mortgage deed dated 22.04.2015. The defendant handed over the original sale deed to the mortgagee. On 14.09.2017, the mortgagee issued a legal notice to the defendant to discharge the mortgage debt, which the defendant got discharged through the registered redemption deed dated 23.01.2018. Later the daughter of the defendant took the original title deed, without the knowledge of the defendant and filed the suit for partition in O.S.No.182 of 2018 on the file of Civil Judge (Junior Division), Bheemili against the defendant, his son and brother, which was dismissed for default on 24.07.2019. The defendant further submitted that, in view thereof, there was no chance to deposit the title deed of the defendant with the plaintiff on 20.10.2016. The defendant could not file the registered

documents at the time of filing of the written statement. It was pleaded that those documents were misplaced at that time and could not be traced. However, those documents were very much necessary to prove the case of the defendant and to disprove the case of the plaintiff.

10. To the aforesaid I.A., the plaintiff filed objection, inter alia, denying the same and reiterating the plaint case. It was pleaded that the defendant did not deposit his original title deed with the mortgagee. Such a plea was afterthought. The deposit of the original title deed was not mentioned either in the mortgage deed nor in the redemption deed. The suit O.S.No.182 of 2018 was in no way concerned to O.S.No.334 of 2019. Those documents were not relevant. There was no such pleading in the written statement of the defendant nor in the cross-examination of P.W.1 made by the defendant. There was no proper explanation for not producing those documents along with written statement. The I.A deserved dismissal.

11. The learned trial court framed the following point for determination:-

“Whether the leave can be granted to the petitioner/defendant for filing the so-called documents and if so whether those documents can be received to file?”

12. The learned trial court dismissed I.A.No.375 of 2024 vide order dated 01.08.2024.

13. Learned counsel for the petitioner submitted that by rejection of leave the petitioner/defendant has been denied the opportunity to defend. The rejection is on technical ground that, in the written statement those documents were not mentioned for defence. He submitted that those documents were necessary for the proper adjudication of the case.

14. I have considered the aforesaid submission and perused the material on record.

15. Order VIII Rule 1-A CPC reads as under:-

“1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.—(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement. (2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is. A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.] (4) Nothing in

this rule shall apply to documents— (a) produced for the cross-examination of the plaintiff's witnesses, or (b) handed over to a witness merely to refresh his memory.”

16. A bare perusal of Rule (1-A) shows that where the defendant bases his defence upon a document or relies upon any document in his possession or power in support of his defense or claim for set off or counter claim, he shall enter such document in a list and shall produce it in court, when the written statement is presented by him and shall at the same time deliver the documents and a copy thereof to be filed with the written statement. It is clear that the sub section relates to the documents upon which the defendant bases his defence or relies upon, in support of his defence. So, the defence must be based on documents, to be mentioned in the written statement. The copy of those document is to be entered in the list and is to be delivered or filed with the presentation of the written statement. If any such document is not in possession or power of the defendant, then he shall, wherever possible, mention, in whose possession or power the document is. As per sub section (3), a document which ought to be produced in court by the defendant under the sub rule-(1A) but not so produced shall not be received

in evidence on his behalf at the hearing of the suit without the leave of the court.

17. In the present case, it is evident from the written statement, that the defendant did not refer to these documents. His defence was not based upon those documents nor were they relied upon in support of the defence. Consequently, the leave could not be granted under sub rule (3). Sub rule (3) relates to only those documents which are mentioned in the written statement upon which either the defence is pleaded or those documents are relied in defence. Learned trial court has observed that in the written statement there was no whisper about the so-called documents. Though the defendant in his chief examination mentioned about those documents, but any evidence beyond pleading could not be seen.

18. The learned trial court did not believe the explanation that those documents had been misplaced. It was observed that if it was so, atleast in the written statement those should have been mentioned, since the alleged transaction was prior to filing of the suit. The defendant could not explain as to when the so-called documents were traced; by what means and under what circumstances, he tried to secure those documents. For the

reasons assigned, the trial court did not grant leave to file those documents. Leave was rejected.

19. In **Sugandhi (dead) by Legal Representatives and another vs. P. Rajkumar represented by his Power Agent Imam Oli<sup>1</sup>**, upon which learned counsel for the petitioner placed reliance, the Hon'ble Apex Court held that the Order VIII Rule 1A(3) provides a second opportunity to the defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court. The discretion conferred upon the court to grant such leave is to be exercised judiciously. While there is no straitjacket formula, this leave can be granted by the court on a good cause being shown by the defendant. The Hon'ble Apex Court, held that the procedure is the handmade of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3). In the said case, the defendant filed application assigning cogent reasons for not producing the documents along with the written statement. They had stated that

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<sup>1</sup> (2020) 10 SCC 706

those documents were missing and were only traced at a later stage. It could not be disputed in that case that the documents were necessary for arriving at a just decision in the suit. The Hon'ble Apex Court observed that the leave ought to have been granted to produce those documents.

20. The principle of law as laid down in **Sugandhi** (supra), on interpretation of Order VIII Rule 1-A CPC is that, if cogent reason is assigned, the leave ought to be granted as the procedure in C.P.C is the handmade of justice. In the present case, the cause shown by the defendant was found as not sufficient or good cause by the learned trial court. The main reason for not granting the leave was that in the written statement, there was no such mention or whisper about those documents. The defence of the petitioner, was not based upon those documents nor those documents were relied upon in support of the defense, which is the pre-requisites under Order VIII Rule 1(A) C.P.C.

21. The document might not have been filed along with the written statement but there should have been mention in the written statement, either taking defence based on those documents or those documents being relied upon in support of the defense. Besides, those documents must also have been

shown to be necessary, for decision of the suit, for the leave being granted. The previous proceedings of different suit O.S.No.182 of 2018 on the file of the learned Junior Civil Judge at Bhimili was within the knowledge of the defendant-petitioner but was not pleaded in the written statement. If those documents were necessary, the petitioner must have pleaded about O.S.No.182 of 2018 and established about the necessity of those documents in the present suit.

22. Applying the principle of law as laid down in **Sugandhi** (supra), the petitioner failed to show a good cause as also that the documents in question were necessary for decision in the suit.

23. The reasons assigned by the learned trial court are justifiable reasons. Refusal to grant leave does not suffer from any infirmity or error of law of such a nature, so as to call for interference in the exercise of the jurisdiction under Article 227 of the Constitution of India.

24. It is well settled in law that the jurisdiction under Article 227 of the Constitution of India is supervisory. It is not to be invoked in a routine manner. The suit is of the year 2019. The I.A was filed in the year 2024 for the subject documents, for which there

was no mention in the written statement of the defendant/petitioner.

25. In **Shalini Shyam Shetty v. Rajendra Shankar Patil**<sup>2</sup>, the

Hon'ble Apex Court held in para 58 as under:

“58. Hon'ble Apex Court on analysis of various decisions of the Apex Court formulated the following principles on the exercise of the High Court's jurisdiction under Article 227 of the Constitution of India in para-49, which is as under:

“49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam*

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<sup>2</sup> (2010) 8 SCC 329

*Singh* [(1954) 1 SCC 51 : AIR 1954 SC 215] and the principles in *Waryam Singh* [(1954) 1 SCC 51 : AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh* [(1954) 1 SCC 51 : AIR 1954 SC 215], followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

**(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.**

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in *L. Chandra Kumar v. Union of India* [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore abridgment by a constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand

the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

**(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.**

**(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.**

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality."

26. The civil revision petition is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

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**RAVI NATH TILHARI, J**

Dated:16.10.2024

**Note:**

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**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

**C.R.P.No.1945 OF 2024**

Date:16.10.2024.

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